



DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

27 SEP 1995

CECC-ZA

MEMORANDUM FOR ALL USACE ETHICS COUNSELORS

SUBJECT: Employees Who Are Required to File SF 450s Because of Contracting or Procurement Responsibilities

1. The Executive Branch Financial Disclosure Regulation, 5 CFR 2634.901(a), requires employees whose duties involve "...the exercise of significant discretion in certain sensitive areas..." to file confidential financial disclosure reports (SF 450). These "confidential filers" are more specifically defined in 5 CFR 2634.904(a) and the DoD Joint Ethics Regulation (JER), paragraph 7-300. They include all GS-15s/O-6s and below whose duties and responsibilities "...require them to participate personally and substantially through decision or exercise of significant judgment in taking an official action for contracting or procurement...in which the final decision or action may have a direct and substantial economic impact on the interests of any non-Federal entity" (JER 7-300a.(3)(a)).
2. A similar definition is found in the Procurement Integrity Act, at 41 USC 423(p)(3)(A). There, the term "procurement official" is defined as "any civilian or military officer who has participated personally and substantially" in specific contracting activities. Substantial participation means "active and significant involvement" in activities directly related to a contract. The striking similarity between the two definitions is not coincidental. The definition of "procurement official" was used as a basis for defining "confidential filers." It is apparent that both definitions refer to the same category of individuals involved in the contracting or procurement process. The only distinction is that the Procurement Integrity Act applies to activities prior to contract award while the activities of "confidential filers" can occur at any time during the contracting process.
3. Because the Procurement Integrity Act applies only to procurements over \$100,000, the same threshold should be applied to those contracting and procurement activities which require employees to file an SF 450. Therefore, for purposes of determining who is required to file, only contracts or procurements over \$100,000 have "a substantial economic effect on a non-Federal entity." For the area of contracting and procurement, only those employees who participate personally and substantially through the exercise of significant judgment in taking an official action involving contracts or procurements exceeding \$100,000 will be required to file SF 450s.

4. Questions regarding who must file SF 450s may be addressed to Mr. Kenneth Powers,
USACE Ethics Counselor.

A handwritten signature in black ink, appearing to read "Lester Edelman", with a long horizontal flourish extending to the right.

LESTER EDELMAN
Deputy Designated Agency
Ethics Official